



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/579,167	02/08/2007	Robert Barrie Ainscow	007130.00010	8916

28827 7590 11/30/2009
GABLE & GOTWALS
100 WEST FIFTH STREET, 10TH FLOOR
TULSA, OK 74103

EXAMINER

DOUYON, LORNA M

ART UNIT	PAPER NUMBER
----------	--------------

1796

NOTIFICATION DATE	DELIVERY MODE
-------------------	---------------

11/30/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

iplaw@gablelaw.com

Office Action Summary	Application No. 10/579,167	Applicant(s) AINSCOW ET AL.	
	Examiner Lorna M. Douyon	Art Unit 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 July 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 and 18-27 is/are pending in the application.
- 4a) Of the above claim(s) 20-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15, 18, 19 and 25-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 1796

1. This action is responsive to the amendment filed on July 31, 2009.
2. Applicants' election without traverse of Group I, claims 1-15, 18-19, 25-26 in the reply filed on July 31, 2009 is acknowledged.
3. Claims 1-15, 18-27 are pending. Claims 20-24 are withdrawn from consideration as being drawn to a nonelected invention. Claims 1-15, 18-19, 25-26 are currently amended. Claim 27 is newly added.
4. The objection to claims 1-15, 18-19, 25-26 for minor informalities is withdrawn in view of Applicants' amendment.
5. Claims 1-5, 10, 13-15, 25-26 stand rejected under 35 U.S.C. 102(e) as being anticipated by Bone et al. (US Patent No. 7,083,047) for the reasons set forth in the previous office action.
6. Claim 11 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Bone as applied to the above claims for the reasons set forth in the previous office action.
7. Claims 1-11, 13-15, 18-19, 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al. (US 2002/0142930), hereinafter "Smith".

Art Unit: 1796

Smith teaches a unit dose of detergent product having one or more dishwashing compositions in liquid, gel, paste form, which are substantially anhydrous, and the unit dose includes sachet or pouches having single or multiple compartments (see paragraph [0012] on page 2). In one embodiment, the anhydrous dishwashing composition is in the form of a particulate bleach suspension in a non-aqueous liquid carrier (see paragraph [0016] on page 2). Particulate bleaches suitable for use include inorganic peroxides like percarbonates (see paragraph [0020] on page 2) and chlorine bleaches (see paragraph [0056-0057] on page 5). In preferred embodiments, the dishwashing composition included in the unit dose form comprises a deterative enzyme (see paragraph [0022] on page 3). Bleach precursors and bleach catalysts (i.e., bleach activators) are also added (see paragraph [0057] on page 6). The composition also contains low cloud point non-ionic surfactants (see paragraph [0058-0059] on page 6, in amounts like for example, 5.6 wt% or 4.6 wt% (see paragraph 0076 on page 7). Other suitable components include organic polymers (which read on gelling agents) in levels from about 0.1% to about 30% by weight of the composition (see paragraph [0067] on page 6). The composition can contain a corrosion inhibitor like paraffin in levels of from about 0.05% to about 10% by weight of the composition (see paragraph [0069] on page 6). Other suitable components include optical brighteners and perfumes 9see paragraph [0070] on page 7). Smith, however, fails to specifically disclose a unit dose single compartment containing a composition which comprises bleach, enzyme, mineral oil, nonionic surfactant and gelling agent in amounts as those recited.

Art Unit: 1796

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have prepared a unit dose single compartment containing a composition which comprises bleach, enzyme, mineral oil, nonionic surfactant and gelling agent in their optimum proportions because the teachings of Smith encompass these components and proportions thereof. As to optimization results, a patent will not be granted based upon the optimization of result effective variables when the optimization is obtained through routine experimentation unless there is a showing of unexpected results which properly rebuts the *prima facie* case of obviousness. See *In re Boesch*, 617 F.2d 272,276,205 USPQ 215,219 (CCPA 1980). See also *In re Woodruff* 919 F.2d 1575, 1578, 16 USPQ2d 1934, 1936-37 (Fed. Cir. 1990), and *In re Aller*, 220 F.2d 454,456,105 USPQ 233,235 (CCPA 1955).

8. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith as applied to the above claims, and further in view of MacQueen et al. (US 6,268,466), hereinafter "MacQueen".

Smith teaches the features as described above. Smith, however, fails to disclose a tertiary amide terminated polyamide gelling agent.

MacQueen teaches a tertiary amide terminated polyamide gelling agent useful in formulating personal care products and other articles (see abstract) like household products such as household cleaners (see col. 11, lines 17-20).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the gelling agent of Smith with the tertiary amide

Art Unit: 1796

terminated polyamide gelling agent of MacQueen because the substitution of one gelling agent for another is likely to be obvious when it does no more than yield predictable results.

Response to Arguments

9. Applicants' arguments filed July 31, 2009 have been fully considered but they are not persuasive.

With respect to the rejection based upon Bone, Applicants argue that Bone's liquid composition contains water and is not a true non-aqueous composition, and it also does not include a gelling agent or an emulsifying agent for the mineral oil.

The Examiner respectfully disagrees with the above arguments because the "substantially non-aqueous" composition of Bone as disclosed in col. 13, lines 16-21, means that the level of water or other aqueous components in the rinse conditioner composition is less than 20% by weight of the total weight of the rinse conditioner composition, more preferably 15% or less by weight, most preferably 10%, e.g. 5% or even 3% or less by weight. The term "or less" includes "zero" as the lower limit. Also, Bone teaches some non-limiting examples in col. 20, lines 42-56, wherein the water content of the composition is in the range of 0-5 wt%. Hence, it is clear from these teachings that Bone teaches a composition having a "zero" weight percent water. Even though in one example the composition comprises 3 wt% water (see Composition 2 in col. 20, lines 43-57), in col. 5, lines 47-53, Bone teaches that the water soluble package and any contents present therein must be compatible with each other, which means that

Art Unit: 1796

in an inert atmosphere free of moisture and at a temperature of from 5 to 40°C, the water soluble package with the rinse conditioner contents therein does not rupture or release any contents within 4 weeks, more preferably 8 weeks, most preferably 20 weeks. With respect to the gelling agent and emulsifying agent, as stated in the previous office action, Bone teaches esterified sucrose erucate, which reads on the gelling agent, and a secondary alkyl alcohol with an average degree of ethoxylation of 7, a nonionic surfactant, which reads on the emulsifying agent (see Composition 2 in col. 20, lines 43-57). In col. 16, line 65 to col. 17, line 53, Bone teaches nonionic surfactants (which are emulsifying agents) which are present in an amount from 0.01 to 10% by weight, based on the total weight of the composition, and polymeric stabilisers (which also read on the gelling agent) which are present at a level of from 0.01 to 5% by weight based on the total weight of the composition. Bone also teaches enzymes (see col. 20, lines 21-31) which also read on the aqueous sensitive component.

With respect to the rejection based upon Smith, Applicants argue that the present invention differs from Smith in that the present invention contains no water and is truly non-aqueous, using the carrier agent in the form of the mineral oil as the bulk component of the composition. Applicants also argue that even though Smith does disclose the presence of particulate bleach suspensions, but does so in the context of a non-aqueous liquid carrier and not a gel as in the present invention (see para. 0016). Applicants also argue that the organic polymers in Smith are provided for the purpose of anti-redeposition and soil release, and not as gelling agent. The paraffin in Smith is also

Art Unit: 1796

argued by Applicants as being a corrosion inhibitor and not as a carrier for the aqueous sensitive component.

The Examiner respectfully disagrees with the above arguments because on page 2, paragraph [0013], Smith teaches anhydrous dishwashing composition , wherein the term anhydrous is intended to include compositions containing less than about 10% of water by weight of the composition, preferably less than about 5% of water and more preferably less than about 1%. It is evident from Examples 1-4 on page 7, that Smith teaches anhydrous compositions without water. With respect to the particulate bleach suspension in a non-aqueous liquid carrier of Smith in paragraph [0016], please note that this is but one embodiment of the teachings of Smith. It is clear in paragraph [0012] that the dishwashing compositions can be in liquid, gel, or paste form. With respect to the teachings of Smith regarding the organic polymers as anti-redeposition and soil release agents and not as gelling agents, and the paraffin as a corrosion inhibitor, not as a carrier for the aqueous sensitive component, please note that the range of proportions (i.e., about 0.1% to about 30% by weight of organic polymers, see paragraph [0067] and from about 0.05% to about 10% by weight of paraffins, see paragraph [0069]) overlap those recited, hence, said organic polymers and paraffin would behave similarly as those recited. "Products of identical composition can not have mutually exclusive properties." A chemical composition and its properties are inseparable. Therefore, if the prior art teaches the identical chemical structure, the properties applicant discloses and/or claims are necessarily present. *In re Spada*, 911 F.2d 705, 709, 15 USPQ2d 1655, 1658 (fed. Cir. 1990). See MPEP 2112.01 II.

Art Unit: 1796

With respect to the rejection of claim 12 based upon Smith in view of MacQueen, Applicants argue that Smith in combination with MacQueen does not disclose, suggest or teach the use of a mineral oil in a non-aqueous gel composition for stabilizing an aqueous sensitive component or use of an emulsifying agent in combination with the mineral oil.

The Examiner respectfully disagrees with the above arguments because, as stated in the previous office action and which is repeated in paragraph 8 above, it would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the gelling agent of Smith with the tertiary amide terminated polyamide gelling agent of MacQueen because the substitution of one gelling agent for another is likely to be obvious when it does no more than yield predictable results.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

Art Unit: 1796

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lorna M. Douyon whose telephone number is 571-272-1313. The examiner can normally be reached on Mondays-Fridays 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lorna M Douyon/
Primary Examiner, Art Unit 1796